

IN THE HIGH COURT OF JUDICATURE AT PATNA  
Cr.Misc. No.5197 of 2007  
LOTAN PASWAN  
Versus  
STATE OF BIHAR & ANR

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**For the petitioner** : M/S N.K.Agrawal, Sr.Advocate ,and  
D.N.Tiwari,Advocate  
**For the State** : Mr.Jharkhandi Upadhaya, A.P.P.  
**For Opp.Party no.2** : Mr.Dhananjay Kumar, Advocate

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**ORDER**

This application has been preferred by one of the two accused of Complaint Case No.1228 of 2002 for quashing of the order dated 16.6.2005 passed therein by the learned Sub Divisional Judicial Magistrate, Purnia , whereby he has taken cognizance against the named accused of offences under Sections 307/34 and 218 I.P.C. as also order dated 22.11.2006 passed by the learned 1<sup>st</sup> Additional Sessions Judge, Purnia , in Criminal Revision No.251 of 2005 whereby while dismissing the said revision he has affirmed the order dated 16.6.2005 of the learned Magistrate.

For a proper appreciation of the issues which have fallen for consideration in this application, the factual matrix may be noticed with relative brevity. Banmankhi ( Sarsi ) P.S. Case No.125 of 1997 was registered under Section 307/34 I.P.C. and 27 of the Arms Act against the petitioner and another , who admittedly were police personnel , on the basis of the fardbeyan given on 19.6.1997 by one Niranjana Kumar @ Bambam, impleaded herein as Opp.Party no.2, at the Sadar Hospital on 19.6.1997 while undergoing treatment there.

According to the informant earlier that day at about 12 noon he received telephonic message to the effect that the bus run by his father had gone out of order whereupon he took one Samshad , a motor mechanic , as a pillion rider on his motorcycle and proceeded towards Banmankhi and enroute when they reached near the Libri bridge , he saw a motorcycle coming from the opposite direction being driven by a man in civil dress and a constable armed with a rifle on the pillion. The oncoming motorcyclist signaled the informant to stop which he ignored and proceeded ahead. It is alleged that the man in civil dress, the petitioner herein, stopped his vehicle and taking the rifle from the constable fired which hit the motorcycle and the informant in the leg. Even as the informant controlled his motorcycle to a stop, the man in civil dress fired again which hit Samshad and the bullet passing through him also caused injury to the informant in the left hand and as a result thereof he fell from the vehicle. On looking up he found Samshad to be dead. The assailants are said to have fled towards Sarsi.

It appears that the police took up investigation and eventually submitted a final form on 31.7.1997 stating that it was due to mistake that firing had been resorted to by the petitioner. It is stated in the final form that one Santosh Kumar, a khalasi of a Tata 407 had reported that two persons on a motorcycle armed with pistols were looting people by the riverside whereupon the Officer Incharge ,Sarsi Police Station had authorized the petitioner and a constable to look into the matter and it was in that connection that the petitioner

had ordered the informant to stop which was not heeded and hence the firing.

It further appears that on submission of the final form, the protest petition filed by the informant was taken up and after the enquiry under Section 202 Cr.P.C. cognizance was taken against the petitioner and another.

The only point which has been sought to be agitated on behalf of the petitioner was that he , admittedly being a Sub Inspector of Police was acting in discharge of his official duty in trying to prevent criminals from looting people by the river side on the basis of information received of such looting taking place and it was in that connection that he had signaled the complainant to stop and when he did not heed his signal he resorted to firing which unfortunately resulted in the death of Samshad. On this premise it was submitted that since the act was in discharge of his official duty previous sanction from the competent authority was a condition precedent before any cognizance could be taken against him in the instant case.

The object of Section 197 Cr.P.C. is to protect Judges and other public servants against irresponsible, frivolous and vexatious prosecution for acts done in discharge of official duty and to see that no prosecution is started unless there is some foundation for the charge brought. It is by now well settled that for invoking the section two conditions are required to be satisfied; namely, (a) the public servant is removable from office either by the Union Government or a State Government and not by any lesser authority, and (b) he is

accused of an offence alleged to have been committed while acting or purporting to act in the discharge of his official duty.

In the instant case admittedly, the petitioner is a Sub Inspector of Police and the other accused is a constable, both of whom were removable from service by the Inspector General of Police he being their Appointing Authority. As such, in my opinion, the protection under Section 197 Cr.P.C. was not available to the petitioner and he could not raise the plea.

There is another aspect of the matter. The sine quo non for the applicability of Section 197 Cr.P.C. is that the offence charged, be it one of omission or commission, must be one committed by the public servant either in his official duty or under colour of his office held by him. In the instant case, on perusal of the complaint, there appears no reasonable nexus between the offence alleged and duties enjoined upon the petitioner. In my opinion the protection of Section 197 Cr.P.C is not available to him.

For the reasons stated above I find no merit in this application which is dismissed.

( Abhijit Sinha, J)

Patna High Court, Patna  
Dated : the 3<sup>rd</sup> September, 2008  
Nawal Kishore Singh/A.F.R.